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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 NATHAN SEASTRUNK, No. C 08-3444 WHA (PR)
11 Petitioner,
12 v.
13 D. K. SISTO, Warden, ORDER DENYING MOTION
14 Respondent. FOR STAY
15 _____ /
16

17 Petitioner, proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C.
18 2254 setting forth nine claims. One claim was dismissed as not cognizable, and respondent was
19 ordered to show cause why the petition should not be granted based on the remaining eight
20 claims. Respondent filed an answer and supporting papers denying the claims and petitioner
21 filed a traverse. Petitioner has now filed a motion to stay this matter while he exhausts
22 additional claims in the state court, which claims he would like to add to this action via
amendment following exhaustion.

23 The United States Supreme Court has held that district courts have authority to stay
24 mixed petitions to allow exhaustion. *Rhines v. Webber*, 125 S.Ct. 1528, 1535 (2005).
25 Petitioner has not met either of the two requirements for a stay, however. A stay can only be
26 granted upon a showing of good cause for petitioner's failure to exhaust the issues before filing
27 the federal petition, and a showing that the issues which the petitioner proposes to exhaust are
28 "potentially meritorious." *Id.* Petitioner has not explained, let alone demonstrated good cause,

1 why he did not exhaust his additional claims before filing this federal petition. In addition,
2 petitioner has not identified the additional claims he wishes to exhaust, so it cannot be
3 determined whether they are potentially meritorious. Accordingly, the motion for a stay (docket
4 number 20) is **DENIED** without prejudice to refiling a motion for a stay that makes the required
5 showing under *Rhines*.

6 **IT IS SO ORDERED.**

7 Dated: November 18, 2009

Wm A

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE